

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

KEVIN SEAN GIBBS,

Defendant-Appellee.

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UNPUBLISHED

May 9, 2006

No. 261062

Wayne Circuit Court

LC No. 04-011543

Before: White, P.J., and Fitzgerald and Talbot, JJ.

PER CURIAM.

Defendant was charged with possession with intent to deliver marijuana, MCL 333.7401(2)(d)(iii), after the police searched his home pursuant to a warrant. The circuit court granted defendant's motion to suppress, finding that the affidavit in support of the warrant was insufficient to establish probable cause, and dismissed the charge. The prosecutor appeals as of right. We reverse and remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

In reviewing a motion to suppress evidence, this Court reviews the trial court's factual findings for clear error but reviews its ultimate decision de novo. *People v Echavarria*, 233 Mich App 356, 366; 592 NW2d 737 (1999). When reviewing a magistrate's conclusion that probable cause to search existed, this Court does not review the matter de novo or apply an abuse of discretion standard. *People v Russo*, 439 Mich 584, 603; 487 NW2d 698 (1992). Paying deference to the magistrate's determination that probable cause did exist, this Court considers only whether the actual facts and circumstances presented to the magistrate would permit a reasonably cautious person to conclude that there was a substantial basis for the finding of probable cause. *People v Sloan*, 450 Mich 160, 168-169; 538 NW2d 380 (1995), overruled in part on other grounds by *People v Hawkins*, 468 Mich 488, 502, 511; 668 NW2d 602 (2003), and by *People v Wager*, 460 Mich 118, 123-124; 594 NW2d 487 (1999).

Issuance of a search warrant must be based upon probable cause. MCL 780.651(1). "Probable cause to issue a search warrant exists where there is a 'substantial basis' for inferring a 'fair probability' that contraband or evidence of a crime will be found in a particular place." *People v Kazmierczak*, 461 Mich 411, 410; 605 NW2d 667 (2000). "A magistrate can consider only the information in the affidavit made before him in determining whether probable cause exists to issue a search warrant." *People v Sundling*, 153 Mich App 277, 285-286; 395 NW2d

308 (1986). The search warrant and underlying affidavit are to be read in a commonsense and realistic manner. *Russo, supra* at 604.

The affidavit stated that in response to an anonymous tip that defendant had a large quantity of marijuana, the police undertook an investigation. The affiant confirmed that defendant resided at the address given by the tipster. He also stated that the police confiscated trash that had been set out in front of defendant's house and discovered documents with defendant's address on them and "numerous large marijuana stems, seeds, marijuana roaches," and rolling-paper packets. A field test on the suspected marijuana was positive. The documents provided a nexus between the trash and defendant's house, and the stems, seeds, and roaches provided probable cause to believe that marijuana would be found within the house. *People v Thivierge*, 174 Mich App 258, 260; 435 NW2d 446 (1988); see also *State v Johnson*, 531 NW2d 275, 278 (ND, 1995); *State v Brown*, 20 Ohio App 3d 36, 38-39; 484 NE2d 215 (1984). To the extent the warrant may have been issued in violation of MCL 780.653(b), that does not warrant suppression. *People v Hawkins*, 468 Mich 488, 491; 668 NW2d 602 (2003). Further, the validity of the outstanding arrest warrant is irrelevant to the probable cause established by the trash pull.

To the extent defendant claims that the police executed the warrant outside their jurisdiction in violation of MCL 764.2a, relief is not warranted. The purpose of the statute "is not to protect the rights of criminal defendants, but rather to protect the rights and autonomy of local governments," *People v Clark*, 181 Mich App 577, 581; 450 NW2d 75 (1989), and thus a violation of the statute does not justify application of the exclusionary rule. *People v Hamilton*, 465 Mich 526, 535; 638 NW2d 92 (2002); *Clark, supra*.

Finally, to the extent defendant contends he was unlawfully detained or arrested, he is likewise not entitled to relief. The proper remedy for an illegal arrest is suppression of the evidence obtained from the person arrested, *People v Burrill*, 391 Mich 124, 133; 214 NW2d 823 (1974), and no evidence was taken from defendant's person in this case.

Reversed and remanded for reinstatement of the charge. Jurisdiction is not retained.

/s/ Helene N. White  
/s/ E. Thomas Fitzgerald  
/s/ Michael J. Talbot